

### **REMARKS**

Applicants have amended claims 1-18, 24-37, 39, 43-45, 47, 50, and 53. Applicants have added claims 55-60. Since all of these inventions are reasonably conveyed by the specification and original claims, there is no issue of new matter.

Claims 34-54 are withdrawn from consideration. Claims 40, 48, and 54 have been cancelled without prejudice to their later prosecution in this or another application.

Upon entry of this amendment, Claims 1-39, 41-47, 49-53, and 55-60 are pending.

### **Election/Restriction**

Applicants thank the Examiner for acknowledging the election of claims 1-33.

### **Rejections under 35 U.S.C. §112**

Claims 5, 9, 10, 27, 30, and 31, are rejected under 35 U.S.C. § 112, second paragraph, as being allegedly indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. More specifically, the Office has expressed concerns regarding the antecedent basis for the phrase "the material" and "the at least one capture agent". Applicants believe that the rejection is moot and requests that it be withdrawn.

### **Rejections under 35 U.S.C. §102**

Claims 1-4, 6, and 9-11 are rejected under 35 U.S.C. § 102(b), as allegedly being anticipated by Kumar et al., U.S. Patent No. 5,624,850 ("Kumar"). Claims 1, 2, 5-10, 20, 21, 24, 27-31, and 33, are rejected under 35 U.S.C. § 102(e), as allegedly being anticipated by Lockhart, U.S. Patent No. 6,974,673 ("Lockhart"). Claims 3, 4, 25, and 26, are rejected under 35 U.S.C. § 102(e), as allegedly being anticipated by Lockhart, in light of Kumar. Applicants respectfully traverse those rejections.

Kumar is cited for its description of capillary containers where at least one region of

the inner surface can be coated with a capture binding member. Detection is performed by irradiating the detection region from a location external to the diameter of the capillary; and detecting the amount of fluorescence passing through a wall of the capillary. Kumar at Claim 1. In other words, the capillaries described by Kumar are not light guiding.

Kumar does not teach or suggest that the light for detection can be emitted from or focused to a location in the axis of the capillary. Nor does Kumar teach or suggest that detection can be performed by measuring the amount of light or the properties of the light transmitted by the fluid inside of the capillary. As such, Kumar does not anticipate the pending claims. Applicants respectfully request that the rejection over Kumar be withdrawn.

Lockhart describes the emission and detection of light into and from a cavity formed by two waveguides by mean of an evanescent wave at the interface of the cavity and the wave guide surfaces. The sensor in Lockhart requires the insertion of a waveguide (e.g. an optical fiber) inside of another waveguide (e.g. a hollow waveguide). Thoses waveguides conduct light inside the material from which they are made of.

Lockhart does not teach or suggest that the light can be guided inside of the fluid contained within the inner volume of the capillary or that light can be directed inside of the fluid filling part or all of the inner volume of the capillary without requiring the use of a second waveguide. Moreover, Lockhart does not teach or suggest that the primary and secondary light connecting elements directly bring light into and respectively collect if from the liquid contained inside of the inner volume of the waveguide without the use of evanescent waves. Accordingly, Lockhart does not teach or suggest the claimed invention. Applicants respectfully request that the rejection over Lockhart be withdrawn.

Finally, the Office has rejected certain of the claims as being anticipated by Lockhart in light of Kumar. Applicants respectfully maintain that Kumar does not rectify the deficiencies of Lockhart. Applicants respectfully request that the rejection over Lockhart in light of Kumar be withdrawn.

**Rejections under 35 U.S.C. §103**

Claims 11 and 32 are rejected under 35 U.S.C. § 103(a) as allegedly being unpatentable over Lockhart, in view of Kumar. Claims 16 and 17 are rejected under 35 U.S.C. § 103(a) as allegedly being unpatentable over Lockhart in view of Aker et al., U.S. Patent No. 6,558,626 ("Aker"). Claim 23 is rejected under 35 U.S.C. § 103(a) as allegedly being unpatentable over Lockhart in view of Saaski et al., U.S. Patent No. 6,484,594 ("Saaski").

Applicants respectfully traverse. In order to establish a *prima facie* case of obviousness under 35 U.S.C. § 103(a), the Examiner must establish three elements. First, the Examiner must point to a suggestion or motivation, either in the prior art or in the general body of knowledge, to modify or combine the prior art. Second, there must be a reasonable expectation of success in making the suggested modification. Third, the prior art as modified or combined must teach or suggest all limitations of the claimed invention. See M.P.E.P. 2142.

As stated above, Lockhart does not teach or suggest that the primary and secondary light connecting elements directly bring light into and respectively collect if from the liquid contained inside of the inner volume of the waveguide without the use of evanescent waves. Kumar does not remedy that deficiency by merely disclosing coating the capillary surface with a blocking solution to prevent non-specific absorption. Thus, the claims are nonobvious over Lockhart in view of Kumar and this rejection should be withdrawn.

Aker has been cited for its description of photomultiplier tubes. Again, combining Aker with Lockhart does not remedy the deficiencies of Lockhart. Neither reference, either alone or in combination, teaches or fairly suggests the claimed invention. Applicants request that this rejection be withdrawn.

Finally, Saaski has been cited for its description of the use of a waste container and of the clearing of historic target material. Saaski does not remedy the deficiencies of Lockhart. Neither reference, either alone or in combination, teaches or fairly suggests the claimed invention. Applicants request that this rejection be withdrawn.

**CONCLUSION**


In view of the foregoing amendments and remarks, Applicants respectfully requests reconsideration and reexamination of this application and the timely allowance of the pending claims.

Please grant any extensions of time required to enter this response and charge any additional required fees to Deposit Account No. 06-0916.

Respectfully submitted,

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By: \_\_\_\_\_

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